

(3) *Substantive knowledge of the program to be contracted.* The tribal organization shall be presumed to have substantive knowledge of the program to be contracted if it meets one or more of the following conditions:

(i) The tribal organization has successfully managed a similar program before through grant or contract for which standards have been established.

(ii) The members of the tribal organization have been consumers of such services in the past and have developed an understanding of the program sufficient to enable the tribal organization to effectively carry out the contract operation.

(iii) The tribal organization has made arrangements to obtain and to develop its knowledge of the program.

(4) *Community support.* Before the IHS can enter into a contract there must be a request made in accordance with §36.206. The tribal governing body's resolution under §36.206 shall be presumed to demonstrate that there is community support for the proposed contract. Any assertion of a lack of community support by persons to be served under the contract, is subject to exhaustion of tribal remedies by those making such assertions.

(5) *Adequacy of trained personnel.* The adequacy of trained personnel available to the tribal organization to carry out the proposed contract will be presumed if any of the following conditions exists:

(i) If the tribal organization has a personnel system that prescribes minimum occupational qualification standards, which shall be not less than minimum Civil Service standards where applicable and procedures for the selection of personnel on the basis of such qualifications, and the personnel to be used under the proposed contract are to be employed under the personnel system.

(ii) If there is no tribal personnel system, it will be assumed that the personnel to be employed under the proposed contract are adequately trained if the tribal organization has established position descriptions for key personnel to be employed under the contract and will establish within a reasonable time a personnel system

similar to the one described in paragraph (c)(5)(i) of this section.

(6) *Other necessary components of contract performance.* (i) The contractor's proposal must demonstrate the capacity to meet minimum health program and professional standards established by IHS for each major health service activity of the IHS. The Director will establish and make available to any prospective contractor the minimum standards for each major health service activity of the Indian Health Service. In evaluating the contractor's proposal, the IHS will take into account the prevailing health program and professional standards of IHS for the health service activity in the location concerned.

(ii) The contractor's proposal will be evaluated to determine the contractor's ability to meet the Uniform Administrative Standards published as a Notice of Proposed Rulemaking in February 10, 1975, 40 FR 6304.

(iii) The ability of the contractor to carry out the contract in accordance with IHS policy, the applicable regulations of this part, and the Act.

(iv) No other components shall be prescribed as a basis for declination unless such components are added to the regulations in this subpart by revision or amendment of regulations.

(7) IHS officials may not decline to enter into a contract with a tribal organization because of any objection that would be overcome through the contract.

§36.209 Government property.

(a) In carrying out a contract made under this part, the Director will wherever possible, permit a tribal contractor to use buildings, facilities, and related equipment and other personal property owned by the IHS within his jurisdiction. Arrangements on the use of IHS property shall be provided for in the contract or other agreement as appropriate. In determining whether real or personal property can be provided, he shall determine whether the IHS can provide comparable services for any of the uncontracted part of the program.

(b) Requests for the use of IHS property which arise after signing of the

contract shall be submitted to the relevant IHS official by the tribal organization. Such requests should be granted unless such a use would seriously interfere with the administration of existing IHS programs. The property must conform to the minimum standards established pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651).

§ 36.210 Submitting contract proposals.

(a) When services under the proposed contract will be provided to one or more tribes within the jurisdiction of a single Area Office, the completed contract proposal with documentation of the tribal request(s) and approvals of each such tribe effected shall be delivered or mailed to the Area Director of that Area Office.

(b) When services will be provided to tribes within the jurisdiction of more than one IHS Area Office, a copy of such proposals and documentation shall be forwarded to each of the Area Offices affected.

§ 36.211 Contract proposal approval officials.

The Director or his delegate is authorized to approve proposals for contract under this subpart.

§ 36.212 Review.

Upon receiving a contract application, Indian Health Service will:

(a) Notify the tribal organization in writing that the proposal has been received. This notice will be made within five (5) calendar days after receipt of the proposal.

(b) Review the proposal for completeness and promptly request additional information from the tribal organization or from the requesting tribe which will be needed to reach a decision.

(c) Notify Area Office subordinate activities serving the tribe(s) which will receive services under the contract and obtain any needed information and/or relevant recommendations on the contract.

(d) Assess the contract proposal to determine if it is feasible and if it complies with the appropriate requirements of the Act and of the regulations in this subpart.

(e) Meet with representatives of the tribal governing body and contract applicant to resolve any declination issues.

(f) Whenever declination issues cannot be resolved as in paragraph (e) of this section, notify the tribal organization of deficiencies in the proposal and provide to the extent practicable technical assistance, as requested, to overcome such deficiencies.

(g) Approve or disapprove the proposal after fully reviewing and assessing it and any additional information submitted by the tribal organization provided, however, that no action to disapprove shall be taken during the period of provision of technical assistance.

(h) Promptly notify the tribal organization in writing of the decision to approve or disapprove the proposal. If the proposal is disapproved, the notice shall contain but need not be limited to the following:

(i) Specific objections, which are based on failures to meet applicable program or administrative standards or fund restrictions, which preclude acceptance of the Indian Self-Determination Contract Proposal;

(ii) Guidance to the tribe regarding the steps which need to be taken to overcome the stated objections;

(iii) Identification of assistance which can practicably be made available to the tribe upon request to overcome the stated objections;

(iv) Notification to the tribal organization of its right to appeal and to request an informal or formal hearing in accordance with § 36.214 of this subpart.

§ 36.213 Processing time.

The approving official will approve or disapprove a contract proposal within sixty (60) calendar days after receipt. The sixty (60) calendar day deadline may be extended only after obtaining the written consent of the tribal organization.

§ 36.214 Tribal appeals to proposal declinations.

(a) On being advised that an Indian Self-Determination Contract Proposal has been disapproved by the appropriate approving official, and having